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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,795	06/23/2003	Morris Samelson	P-5435(DIV2)	7990
30553	7590	03/05/2004	EXAMINER	
GUNN, LEE & HANOR 700 N. ST. MARY'S STREET SUITE 1500 SAN ANTONIO, TX 78205			CHANNAVAJJALA, LAKSHMI SARADA	
		ART UNIT		PAPER NUMBER
		1615		

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/601,795	SAMELSON ET AL.
	Examiner	Art Unit
	Lakshmi S Channavajjala	1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>6/23/03, 7/31/04 &amp; 8/15/03</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____ .

**DETAILED ACTION**

Claims 1-20 are pending in this application.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US 5,948,395 to Le Bras-Roulier et al ('395) OR by US 4,897,214 to Gazzani ('214).

Instant claim 1 is directed to a method of manufacturing cosmetic preparations comprising the mixing of cosmetic precursors in a process vessel to form said cosmetic preparations during consecutive heating and cooling cycles.

'395 disclose a cosmetic composition prepared a process that involves steps of heating and cooling the cosmetic ingredients to form the final cosmetic composition (entire patent, in particular, abstract, col. 2, lines 7-19, col. 4, lines 35 – col. 5, line 15). Thus, '395 anticipate instant method of manufacturing a cosmetic composition.

'214 disclose cosmetic compositions for hair and skin, where a portion of the components are heated prior to admixing with the other cosmetic ingredients and mixture is stirred while cooling (paragraph bridging col. 4-5). Thus, '214 anticipate instant method of manufacturing a cosmetic composition.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by EP 1074245 (EP '245) or EP 937 453 (EP '453).

EP '245 disclose a cosmetic and tissue-cleansing composition comprising Dead Sea mineral salts as an active ingredient and other cosmetic additives, where the process of preparing the composition involves consecutive heating and cooling cycles (see example on page 5 & the process of preparing on page 6).

EP '453 disclose a cosmetic and tissue-cleansing composition comprising Dead Sea mineral salts as an active ingredient and other cosmetic additives, where the process of preparing the composition involves consecutive heating and cooling cycles (see example on page 6 & the process of preparing on page 7). Thus, both EP '245 and EP '453 anticipate the instant claim 1.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1074 245 (EP '245) alone or EP '245 in view of US 5,997,889 to Durr et al ('889).

EP '245 teaches cosmetic composition containing Dead Sea mineral salts that granular in nature, for the treatment of skin itching caused by Psoriasis or for skin exfoliating or scrubbing. The composition of EP '245 contains 5% Dead Sea salts and other herbs and claimed aromatic essences such as lavender, chamomile, calendula etc., for skin relaxing or other

therapeutic effects (Table on page 9 continued on page 10). EP '245 also teaches emollients and waxes such as vegetable oils, lipo wax etc (page 5, paragraph 0053; table on page 6, and page 4, paragraph 0043).

EP fails to teach the claimed limitations, at least 50% Dead Sea mineral particles, the claimed oils, temperatures for heating and the rate of cooling. However, EP '245 suggests that the composition contains Dead Sea mineral salts in an amount sufficient to improve properties of the cosmetic and cleansing composition (1:10 ratio, Para 0059), to provide smoothness, decrease lumpiness, itchiness or edema of the skin. EP '245 also teaches the steps of heating and cooling of the process vessels, in the preparation of the composition, where the vessel is first heated to 70 degrees C, to mix different phases of the composition, emulsified and cooled to 38 degrees C. Instant claims recite heating to 65 and cooling to 42 degrees C, which are not significantly different from the temperatures of EP 245, absent showing criticality. Instant application describes Dead Sea mineral salts for the same applications as that of EP '245. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to optimize the amount of Dead Sea salts, the processing temperatures for preparation of the cosmetic composition and inclusion of various cosmetic additives and aroma agents, with an expectation to achieve the art recognized effect i.e., an effective treatment for reducing itching and increasing smoothness of skin because EP '245 teaches optimizing the amounts of active ingredients i.e., Dead Sea salts, herbs, aromatic agents which help in protecting skin (Dead Sea salt) from damage due to itching, flaking, eczema etc., impart a pleasant and tactile feeling (emollients); improve circulation and relaxation (herbs and aroma agents).

‘889 teaches hand and body creme for skin ailments such as dry, itchy skin, eczema, psoriasis etc., comprising oils such as almond oil, jojoba oil, vitamin e oil, for moisturizing and conditioning of skin (col. 2) and beeswax for forming a protective barrier (col. 3). ‘889 teach addition of fragrances such as rosewood, chamomile, calendula, lavender, etc (col.4, lines 43-58), for providing immediate relief from skin discomfort. It would have been obvious for one of an ordinary skill in the art at the time of the instant invention to include the appropriate emollients, waxes and fragrances/essential oils of ‘889 in the composition EP ‘245 because ‘889 teaches the ingredients for providing relief to psoriatic or itchy skin conditions and EP ‘245 desires a skin composition for treating psoriasis or itchy skin. Therefore, a skilled artisan would have expected to achieve a more effective composition for treating psoriasis.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/601,796. Although the conflicting claims are not identical, they are not

patentably distinct from each other because the co-pending claims are directed to a cosmetic composition comprising at least 50% processed Dead Sea mineral salts, a carrier medium comprising oils such as jojoba, coconut oil, wax and fragrances, which reads on the composition prepared by the instant process. Accordingly, instant method of preparing cosmetic composition would have been obvious for one of an ordinary skill in the art at the time instant invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala  
Examiner  
Art Unit 1615

March 1, 2004